It has been held that in an action of debt on a foreign judgment, the rate of exchange at the date of trial governs. *Scott* v. *Bevan* (1831) 2 B. & A. 78. Lord Tenterden, *C. J.*, in handing down the opinion of the court, doubted the correctness of the rule; but it is the basis of several American cases involving debts of foreign money. *Marburg* v. *Marburg* (1866) 26 Md. 8. To the same effect are *Smith* v. *Shaw* (C. C. 1808) Fed. Cas. No. 13,107; *Lee* v. *Willcocks* (Pa. 1819) 5 Serg. & Rawl. 48. The same measure was adopted in an action upon a foreign note, although the court admitted that logically the decisive date was that of maturity. *Hawes* v. *Woolcock* (1866) 26 Wis. 629. The principal case extends the measure to an action on a negotiable instrument, which indeed does not differ substantially from other contracts for the payment of money in a foreign country. See *Grant* v. *Healey* (C. C. 1839) Fed. Cas. No. 5,696. Yet it seems that the principle underlying these cases is wrong. The contract to pay foreign money is closely analogous to one for the delivery of any other commodity. 1 Sedgwick, Damages (9th ed. 1912) 538. There seems thus no room for the application of a rule different from that in contract actions,—that the rate of exchange at the date of breach is the basis of calculation. (1920) 20 Columbia Law Rev. 914. *Sheehan* v. *Dalrymple* (1869) 19 Mich. 239; *Fabri* v. *Kalbfleisch* (1873) 53 N. Y. 28; see *Katcher* v. *Amer. Express Co.* (N. J. 1920) 109 Atl. 741. Thus the holder of a protested bill may re-draw on the endorser to re-imburse himself for the new exchange which he pays, 3 Kent, Comm. (1828) *115; and the re-exchange is calculated at the rate of exchange prevailing on the day of dishonor. *Suse* v. *Pompe* (1860) 8 C. B. (N. S.) 538. Directly in support of the principle believed to be sound are *Grave* v. *Dash* (N. Y. 1814) 12 Johns. 17; *Denston* v. *Henderson* (N. Y. 1816) 13 Johns. 322. The courts do not seem to have to deal with the problem except in times marked by abnormal fluctuations in exchange.

REAL PROPERTY—COVENANTS OF SEISIN—COVENANTS RUNNING WITH THE LAND.—In an action to foreclose a mortgage, the defendant filed a counterclaim against the plaintiff mortgagee, who was at the same time a remote grantor, alleging a breach of the covenant of seisin contained in the original deed to the defendant grantor. *Held,* the covenant did not run with the land and the defendant had no cause of action. *Beecher* v. *Turner* (N. Mex. 1920) 189 Pac. 44.

According to the weight of American authority a covenant of seisin is broken at the time of delivery of the deed if at all. The breach at that instant gives rise to a *chose* in action which cannot be assigned at common law. Upon this theory it is generally held that a covenant of seisin does not run with the land. *Chapman* v. *Holmes* (1828) 10 N. J. L. 24; see *Mitchell* v. *Warner* (1825) 5 Conn. 497. However, in England and some American states a covenant of seisin is regarded as one of indemnity under which a cause of action arises whenever a grantee suffers actual damage by reason of the original grantors' defective title. According to this doctrine, frequently spoken of as that of "continuing breach", the covenant of seisin runs with the land. *Kingdon* v. *Nottle* (1815) 4 M. & S. 53; *Knapp* v. *Foley* (1918) 140 Minn. 423, 168 N. W. 188; but see *Eames* v. *Armstrong* (1907) 146 N. C. 1, 59 S. E. 165. Some courts, without apparent reason, limit this rule to cases where the original grantor had possession of the land at the time of the delivery of the deed. See *Bacus* v. *McCoy* (1827) 3 Ohio 211. At common law the result reached in the instant case was strictly

logical. However in code states where *choses* in action are assignable the logic of the rule disappears. *Knapp* v. *Foley, supra.* Apart from logic, the expediency of extending the benefit of the covenant of seisin to subsequent grantees has been recognized in statutes declaring that the covenant of seisin runs with the land. Me., Rev. Stat. (1916) c. 87 § 31; Colo. Ann. Stat. (Gabriel, 1912) § 819.

REAL PROPERTY—FIXTURES—RIGHTS OF INNOCENT PURCHASERS.—The plaintiff sought to replevy a church bell, which in 1870 it had loaned to the X society. So long as the society existed the bell was to be kept in its church. In 1917 the society had disbanded and sold its building to the defendant. The latter took possession of the bell and refused to deliver it on demand. *Held,* that the plaintiff could not recover. Regarding the bell as personalty, the plaintiff was estopped from asserting his title. If it was part of the realty, it passed with the deed. *Inhabitants of Town of Andover* v. *MacAllister* (Me. 1920) 109 Atl. 750.

By the weight of authority chattels attached to the realty in such a manner as to indicate that they are fixtures will pass to a purchaser or mortgagee without notice, by a deed or mortgage of the premises, notwithstanding the express agreement between the owner of the chattels and the owner of the land that they should remain personal property. *Fifield* v. *Farmers' Nat. Bank* (1893) 148 Ill. 163, 35 N. E. 802. One taking with notice of the agreement, however, or of course a party to it, is bound by its terms. *Machinery Co.* v. *Brick & Tile Co.* (1913) 174 Mo. App. 485, 160 S. W. 902; *Washburn* v. *Inter-Mountain Min. Co.* (1910) 56 Ore. 578, 109 Pac. 382; *Sullivan* v. *Jones* (1880) 14 S. C. 362. It is a strange way of stating the rule, perhaps, to say that an object may at the same time be personalty as to one man and realty as to another. But, what is really the case is that the intention of the parties governs unless the rights of innocent purchasers are prejudiced. As to them the law has extended a protection analogous to that afforded by recording statutes to innocent purchasers of real property. In New York, on the contrary, the intention of the parties controls even as to innocent purchasers. *Godard* v. *Gould* (N. Y. 1853) 14 Barb. 662; but see *Ford* v. *Cobb* (1859) 20 N. Y. 344. This rule has been changed as to conditional sales by statutes so as to give the innocent purchaser additional protection. N. Y. Pers. Prop. Law (Consol. Laws, c. 41) § 62; see *Crocker-Wheeler Co.* v. *Genesee Recreation Co.* (1914) 160 App. Div. 373, 145 N. Y. Supp. 477. The provision of this statute, which calls for the recording in the county in which the attachment is to be made, of a contract for chattels to be attached to the realty, seems most adequately to provide for the interests of all concerned.

SALES—IMPLIED WARRANTY OF FOOD—NEGLIGENCE.—The complaint alleged in substance that the defendant, a wholesale baking corporation, manufactured a cake for human consumption and sold it to a retailer, who resold it to the plaintiff; that owing to a wire nail concealed therein, the plaintiff's gums were punctured. The trial court dismissed the complaint because there was no privity of contract between plaintiff and defendant. On appeal, a new trial was granted on the ground that despite the absence of contractual relations between the plaintiff and defendant, the implied warranty to the retailer "inured to the benefit of the plaintiff", who can recover either for breach thereof or